

**§ 22.28 Permits for bald eagle take exempted under the Endangered Species Act.**

(a) *Purpose and scope.* This permit authorizes take of bald eagles (*Haliaeetus leucocephalus*) in compliance with the terms and conditions of a section 7 incidental take statement under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*; 50 CFR 402, Subpart B) issued prior to the effective date of 50 CFR 22.26.

(b) *Issuance criteria.* Before issuing you a permit under this section, we must find that you are in full compliance with the terms and conditions contained in the applicable ESA incidental take statement issued prior to the effective date of 50 CFR 22.26 for take of eagles, based on your certification and any other relevant information available to us, including, but not limited to, monitoring or progress reports required pursuant to your incidental take statement. The terms and conditions of the Eagle Act permit under this section, including any modified terms and conditions, must be compatible with the preservation of the bald eagle.

(c) *Permit conditions.* (1) You must comply with all terms and conditions of the incidental take statement issued under section 7 of the ESA, or modified measures specified in the terms of your permit issued under this section. At permit issuance or at any time during its tenure, the Service may modify the terms and conditions that were included in your ESA incidental take statement, based on one or more of the following factors:

(i) You requested and received modified measures because some of the requirements for take authorization under the ESA were not necessary for take authorization under the Eagle Act;

(ii) The amount or extent of incidental take authorized under the take statement is exceeded;

(iii) New information reveals effects of the action that may affect eagles in a manner or to an extent not previously considered, and requires modification of the terms and conditions to ensure the preservation of the bald eagle or the golden eagle; or

(iv) The activity will be modified by the permittee in a manner that causes effects to eagles that were not previously considered and which requires modification of the terms and conditions in the incidental take statement in order to ensure the preservation of the bald eagle or the golden eagle.

(2) During any period when the eagles covered by your incidental take statement are listed under the ESA, you must comply with the terms and conditions of both the incidental take statement and the permit issued under this section.

(d) *Permit duration.* The permit will be valid until the action that will take eagles, as described in the incidental take statement or modified to condition the permit issued under this section, is completed, as long as the permittee complies with the terms and conditions of the permit, including any modified terms and conditions.

(e) *Applying for an eagle take permit.* (1) Your application must consist of a copy of the applicable section 7 incidental take statement issued pursuant to the Endangered Species Act (ESA), and a signed certification that you are in full compliance with all terms and conditions of the ESA incidental take statement.

(2) If you request reevaluation of the terms and conditions required under your previously granted ESA incidental take statement for eagles, you must include a description of the modifications you request, and an explanation for why you believe the original conditions or measures are not reasonably justified to offset the detrimental impact of the permitted activity on eagles.

(3) Send completed permit applications to the Regional Director of the Region in which the disturbance would occur—Attention: Migratory Bird Permit Office. You can find the current addresses for the Regional Directors in § 2.2 of subchapter A of this chapter.

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